

**§ 93.102 Applicability.****(a) Action applicability.**

(1) Except as provided for in paragraph (c) of this section or § 93.126, conformity determinations are required for:

(i) The adoption, acceptance, approval or support of transportation plans and transportation plan amendments developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT;

(ii) The adoption, acceptance, approval or support of TIPs and TIP amendments developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT; and

(iii) The approval, funding, or implementation of FHWA/FTA projects.

(2) Conformity determinations are not required under this subpart for individual projects which are not FHWA/FTA projects. However, § 93.121 applies to such projects if they are regionally significant.

**(b) Geographic applicability.** The provisions of this subpart shall apply in all nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan.

(1) The provisions of this subpart apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide (CO), nitrogen dioxide (NO<sub>2</sub>), and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM<sub>10</sub>).

(2) The provisions of this subpart apply with respect to emissions of the following precursor pollutants:

(i) Volatile organic compounds (VOC) and nitrogen oxides (NO<sub>x</sub>) in ozone areas;

(ii) NO<sub>x</sub> in NO<sub>2</sub> areas; and

(iii) VOC, NO<sub>x</sub>, and PM<sub>10</sub> in PM<sub>10</sub> areas if the EPA Regional Administrator or the director of the State air agency has made a finding that transportation-related precursor emissions within the nonattainment area are a significant contributor to the PM<sub>10</sub> nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission) establishes a budget for such emissions as

part of the reasonable further progress, attainment or maintenance strategy.

(3) The provisions of this subpart apply to maintenance areas for 20 years from the date EPA approves the area's request under section 107(d) of the CAA for redesignation to attainment, unless the applicable implementation plan specifies that the provisions of this subpart shall apply for more than 20 years.

**(c) Limitations.** (1) Projects subject to this subpart for which the NEPA process and a conformity determination have been completed by DOT may proceed toward implementation without further conformity determinations unless more than three years have elapsed since the most recent major step (NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates) occurred. All phases of such projects which were considered in the conformity determination are also included, if those phases were for the purpose of funding final design, right-of-way acquisition, construction, or any combination of these phases.

(2) A new conformity determination for the project will be required if there is a significant change in project design concept and scope, if a supplemental environmental document for air quality purposes is initiated, or if three years have elapsed since the most recent major step to advance the project occurred.

**(d) Grace period for new nonattainment areas.** For areas or portions of areas which have been continuously designated attainment or not designated for any standard for ozone, CO, PM<sub>10</sub> or NO<sub>2</sub> since 1990 and are subsequently redesignated to nonattainment or designated nonattainment for any standard for any of these pollutants, the provisions of this subpart shall not apply with respect to that standard for 12 months following the effective date of final designation to nonattainment for each standard for such pollutant.

[62 FR 43801, Aug. 15, 1997, as amended at 65 FR 18918, Apr. 10, 2000; 67 FR 50817, Aug. 6, 2002]

EFFECTIVE DATE NOTE: At 69 FR 44072, July 1, 2004, § 93.102 was amended by revising paragraphs (b)(1), (b)(2) introductory text and

(b)(2)(iii); redesignating paragraph (b)(3) as paragraph (b)(4); adding a new paragraph (b)(3); revising paragraph (c); and revising paragraph (d), effective Aug. 2, 2004. For the convenience of the user, the added and revised text is set forth as follows:

**§ 93.102 Applicability.**

\* \* \* \* \*

(b) \* \* \*

(1) The provisions of this subpart apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide (CO), nitrogen dioxide (NO<sub>2</sub>), particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM<sub>10</sub>); and particles with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers (PM<sub>2.5</sub>).

(2) The provisions of this subpart also apply with respect to emissions of the following precursor pollutants:

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(iii) VOC and/or NO<sub>x</sub> in PM<sub>10</sub> areas if the EPA Regional Administrator or the director of the State air agency has made a finding that transportation-related emissions of one or both of these precursors within the nonattainment area are a significant contributor to the PM<sub>10</sub> nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission) establishes an approved (or adequate) budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.

(3) The provisions of this subpart apply to PM<sub>2.5</sub> nonattainment and maintenance areas with respect to PM<sub>2.5</sub> from re-entrained road dust if the EPA Regional Administrator or the director of the State air agency has made a finding that re-entrained road dust emissions within the area are a significant contributor to the PM<sub>2.5</sub> nonattainment problem and has so notified the MPO and DOT, or if the applicable implementation plan (or implementation plan submission) includes re-entrained road dust in the approved (or adequate) budget as part of the reasonable further progress, attainment or maintenance strategy. Re-entrained road dust emissions are produced by travel on paved and unpaved roads (including emissions from anti-skid and deicing materials).

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(c) *Limitations.* In order to receive any FHWA/FTA approval or funding actions, including NEPA approvals, for a project phase subject to this subpart, a currently conforming transportation plan and TIP must

be in place at the time of project approval as described in § 93.114, except as provided by § 93.114(b).

(d) *Grace period for new nonattainment areas.* For areas or portions of areas which have been continuously designated attainment or not designated for any NAAQS for ozone, CO, PM<sub>10</sub>, PM<sub>2.5</sub> or NO<sub>2</sub> since 1990 and are subsequently redesignated to nonattainment or designated nonattainment for any NAAQS for any of these pollutants, the provisions of this subpart shall not apply with respect to that NAAQS for 12 months following the effective date of final designation to nonattainment for each NAAQS for such pollutant.

**§ 93.103 Priority.**

When assisting or approving any action with air quality-related consequences, FHWA and FTA shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the NAAQS. This priority shall be consistent with statutory requirements for allocation of funds among States or other jurisdictions.

**§ 93.104 Frequency of conformity determinations.**

(a) Conformity determinations and conformity redeterminations for transportation plans, TIPs, and FHWA/FTA projects must be made according to the requirements of this section and the applicable implementation plan.

(b) *Frequency of conformity determinations for transportation plans.* (1) Each new transportation plan must be demonstrated to conform before the transportation plan is approved by the MPO or accepted by DOT.

(2) All transportation plan revisions must be found to conform before the transportation plan revisions are approved by the MPO or accepted by DOT, unless the revision merely adds or deletes exempt projects listed in § 93.126 or § 93.127. The conformity determination must be based on the transportation plan and the revision taken as a whole.

(3) The MPO and DOT must determine the conformity of the transportation plan no less frequently than every three years. If more than three years elapse after DOT's conformity determination without the MPO and DOT determining conformity of the